October 24, 2024

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Re: Modernizing H-1B Requirements
Section 5.1(d) of Executive Order 14110 (AI EO)

Dear Secretary Mayorkas:

On October 23, 2023, U.S. Citizenship and Immigration Services published a Notice of Proposed Rulemaking on "Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers." On October 30, President Biden signed Executive Order 14110 on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, one of the objectives of which was to promote innovation and competition by better attracting and retaining talent in the United States economy." One instruction to the Secretary of Homeland Security in the E.O. was to "continue its rulemaking process to modernize the H-1B program and enhance its integrity and usage." As you are aware, this mandate follows from the fact that the H-1B is one of the most important means for the United States to attract and retain some of the world's leading experts in AI and other critical and emerging technologies.

A year later, important provisions of the proposed rule remain to be finalized that would significantly improve the ability of the United States to recruit and retain international scientists, engineers, and other experts.

We write to you as science societies, professional societies, and policy organizations who share an interest in protecting and advancing the dynamism of U.S. science and innovation. As a diverse group of stakeholders from across the U.S. science and innovation ecosystem, we encourage the Department to prioritize finalizing the provisions most critical to recruiting and retaining STEM talent in industry, academia, and government. We know that international science, technology, engineering, and mathematics (STEM) talent play a vital and direct role in research and development, innovation, commercialization, and other progress in critical and emerging technologies. We believe that finalizing key provisions to modernize the H-1B program will improve utilization of the program, accelerate innovation, and advance U.S. technological leadership.

We ask the Department to finalize the following four components of the proposed rule in the next three months:

1. **Deference**. Codifying deference to prior determinations would provide certainty and predictability to H-1B holders seeking renewals, not to mention providing consistency and efficiency to USCIS. We know that when deference was not USCIS policy from October 23, 2017 to April 27, 2021, many specialists who were long in the United States and were

awaiting green cards were unexpectedly denied renewals. The lack of deference imposed two-fold costs the U.S. innovation engine. First, it cut into retention, losing the U.S. economy talent through inconsistent or inappropriate denials. Second, the uncertainty, unpredictability, and inconsistency also harmed recruitment by undermining confidence in the H-1B as a reliable pathway on which to wait for a green card. Codifying deference will ensure that talent can reasonably and credibly expect consistency in their renewals and therefore trust in the H-1B program.

2. **Cap-exempt H-1B eligibility**. Clarifying, simplifying, and modernizing eligibility for cap-exempt H-1B employment will promote research and development activity in the context of the modern innovation ecosystem. For example, regional innovation initiatives like NSF's Engines and EDA's Tech Hubs are pioneering collaborative place-based innovation models which would better be able to access the talent on which their success relies with clarity about when their participating organizations are eligible for cap-exempt H-1Bs. Moreover, data suggest that around 30% of all DACA recipients have earned U.S. STEM degrees and are working in STEM, many of whom might also qualify for H-1B cap-exempt employment should a clarifying regulation be published.
3. **Normally requiring a bachelor's degree.** Codifying that a position must "normally" require a bachelor's degree does not mean that it must "always" require a bachelor's degree is important to retain flexibility around the often unconventional career paths of top talent in dynamic industries like critical and emerging technology fields. Even in technical AI jobs that usually require a PhD, some extraordinary people without a bachelor's degree end up proving the best for a role. For example, Christopher Olah, a foreign-born AI researcher without a bachelor's degree worked at Google Brain, led interpretability research at OpenAI, and went on to cofound Anthropic, one of the leading AI labs. It is good for innovation for employers to be afforded some discretion to hire exceptional candidates with impressive experience without hampering their ability to sponsor specialty occupation professionals for H-1B status.
4. **Cap-gap extension**. Extending cap-gap protections will prevent costly disruptions in work authorization for international graduates on F-1 visas seeking H-1Bs. Given that international education is a major draw for international talent and transitioning from a student visa to an H-1B is a major retention mechanism for the country, ensuring this process is flexible and minimally disruptive has major benefits for international recruitment and retention—and therefore for the U.S. innovation ecosystem.

As a recent consensus study from the National Academies of Sciences concluded, international science, technology, engineering, and mathematics (STEM) experts are "a direct contributor to domestic innovation, economic growth, and leadership in science and technology" and therefore "it is imperative for the United States to continue to attract and retain the best and brightest foreign STEM talent." From our perspective, finalizing the provisions described above soon would give the science and innovation ecosystem much-needed predictability and certainty, yielding important benefits to U.S. science, innovation, and technology. We understand that a major rule takes significant time and work to finalize and appreciate your efforts and consideration.

Respectfully submitted,

American Chemical Society
American Physical Society
Economic Innovation Group
Federation of American Scientists
Institute for Progress
Niskanen Center

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